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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/539,863

06/17/2005

Thomas Ralph Edwards Greenwell

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78905 7590 11/12/2010

Saul Ewing LLP (Philadelphia)

Attn: Patent Docket Clerk

Penn National Insurance Plaza

2 North Second St., 7th Floor

Harrisburg, PA 17101

EXAMINER

RAYYAN, SUSAN F

ART UNIT

PAPER NUMBER

2167

MAIL DATE

DELIVERY MODE

11/12/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/539,863</p>	<p>Applicant(s) GREENWELL ET AL.</p>	
	<p>Examiner SUSAN FOSTER RAYYAN</p>	<p>Art Unit 2167</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 November 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/John R. Cottingham/
Supervisory Patent Examiner, Art Unit 2167

/SUSAN FOSTER RAYYAN/
Examiner, Art Unit 2167
November 9, 2010

Response to Arguments

1. Applicant's arguments filed November 3, 2010 have been fully considered but they are not persuasive.

Regarding independent claim 1, Applicant argues prior art of record does not teach:

a) a single weight associated with each object that defines how urgently that object needs to be replicated. Applicant argues Ferguson parameters are network parameters.

Examiner finds Ferguson teaches this limitation (page 49 lines 3-17 as Pending messages could use a wide variety of criteria to decide whether they may be sent these criteria include but are not limited to maximum message size, maximum time reached, type of message, destination address and "configuration parameters" to include time of day, day of week and "received network parameters" include cycle based on activity level, network airtime. p.51, lines 17-23, as some of the criteria can be used include but is not limited to maximum message size [. . .]. The criteria used to represent how urgent the message is sent may be one or more criteria).

b) assigning a second parameter, a threshold that is a function of the time, with the single weight of each object being locally compared to the threshold at a given time and the outcome of the comparison determining whether the object is sent for replication or not at the time. Applicant argues Fergusons criteria are not applied by the network operator as is the first and second parameters.

In response to applicant's arguments, the recitation "applied by a network operator" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Ferguson teaches assigning a second parameter, a threshold that is a function of the time, with the single weight of each object being locally compared to the threshold at a given time and the outcome of the comparison determining whether the object is sent for replication or not at the time at (page 49 lines 5-17, as "criteria" includes maximum message size, maximum time reached, type of message, destination address and "configuration parameters" to include time of day, day of week and "received network parameters" include cycle based on activity level, network airtime. The criteria used to represent how urgent the message is sent may be one or more criteria).

The rejection of claims 1-27 is maintained.